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IN THE COURT OF APPEALS, DIVISION II,  
OF THE STATE OF WASHINGTON

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BRANDY LEAVITT,

Appellant,

v.

JOSEPH J. LEAVITT,

Respondent.

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**AMICUS CURIAE BRIEF OF WASHINGTON STATE  
COALITION AGAINST  
DOMESTIC VIOLENCE AND LEGAL VOICE**

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## I. INTRODUCTION AND STATEMENT OF THE CASE

Domestic violence is a cancer in our society. In the past six years, 710 domestic violence-related homicides and 241 domestic violence-related suicides occurred in Washington.<sup>1</sup> In 2013 alone, 35 Washington residents died as a result of domestic violence.<sup>2</sup>

One of the strongest legal tools to prevent domestic violence is a civil domestic violence protection order, hereinafter referred to as a “DVPO,” issued under the Washington Domestic Violence Prevention Act (“DVPA”), RCW 26.50. This case presents an increasingly-typical ruling by a lower court on a DVPO request from a domestic violence survivor. What Ms. Leavitt needed, and is entitled to, is a full, one-year order of protection from the abuse of her husband. What Ms. Leavitt got instead was a very short-term, 60-day protection order<sup>3</sup> and the burden of “work[ing] it out”<sup>4</sup> in a stagnant divorce proceeding. Many lower courts incorrectly think that domestic violence survivors should seek protection in family court if dissolution is a legal option and children are involved.

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<sup>1</sup> Washington State Coalition Against Domestic Violence, *Domestic Violence Fatality Review*, <https://fatalityreview.files.wordpress.com/2014/06/fatalities-by-county-through-12-30-2013.pdf> (last visited Nov. 21, 2014).

<sup>2</sup> Washington State Coalition Against Domestic Violence, *2013 Domestic Violence Fatalities in Washington State* (March, 2014), <http://fatalityreview.files.wordpress.com/2014/03/2013-washington-dv-fatalities.pdf>.

<sup>3</sup> The trial court judge stated he would grant a DVPO “for 60 days.” RPI 2:13. However, the DVPO itself states it expired on April 7, 2014, only 56 days after it was granted on February 10, 2014. CP 36; CP 40.

<sup>4</sup> RPI: 1:17-19.

This is wrong because the DVPA is a stand-alone law, which must be applied according to the criteria in RCW 26.50, regardless of collateral divorce proceedings, if any.

All too often, courts leave vulnerable domestic violence survivors with insufficient protection under the mistaken view that domestic violence should be dealt with in family court, rather than through DVPOs under RCW 26.50. However, domestic violence is not simply a “family” or “private” problem to be “worked out” in family court, or the DVPA would not have been enacted. Instead, domestic violence is a matter of the highest public concern. The Legislature correctly has called domestic violence a “serious crime against society” and has expressed its intent “to assure the survivor of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.”<sup>5</sup> Failing to offer survivors like Ms. Leavitt the DVPA’s *full* protection undermines Washington’s long-standing public policy against domestic violence.

The Washington State Coalition Against Domestic Violence (WSCADV) and Legal Voice (collectively, “Amici”) submit that this case provides an opportunity for this Court to provide needed guidance to lower courts on proper application of the DVPA. Amici urge this Court to

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<sup>5</sup> RCW 10.99.010.



find that the lower court erred in denying Ms. Leavitt a one-year DVPO.

In doing so, this Court should clarify that:

- In ruling on a DVPO petition, the paramount concern should be protection of the domestic violence survivor -- not administrative convenience.
- If children are involved, issuance of a DVPO should be guided by RCW 26.50, which allows courts to make provisions regarding minor children, (RCW 26.52.060(1)(d)), and not by dissolution statutes.
- Survivors should not be forced to seek other forms of protection simply because they “may” be available, when they are entitled to a DVPO under the DVPA.
- DVPOs should generally be issued for at least one year.

Amici are leading regional experts on domestic violence issues with a unique, informed perspective on how to respond to, and prevent, domestic violence. This brief first will discuss the purpose behind the DVPA and why the 60-day order in this case undercuts it. It will then explain why meaningful DVPOs are so critical to domestic violence survivors and provide the most effective protection under the law. This brief will close by urging the Court to grant Ms. Leavitt the protection she needs: a full, one-year DVPO.

## II. STATEMENT OF FACTS

Amici rely on the facts set forth in the Opening Brief of Appellant Brandy Leavitt, filed with this Court on September 5, 2014.

## III. INTEREST OF AMICI

Amici incorporate the statement of interest set forth in Amicis' Motion for Leave to File an Amicus Brief.

## IV. DISCUSSION

### A. **The Trial Court's Entry of a Short-Term DVPO Undercuts the DVPA's Purpose of Providing Survivors Efficient and Effective Means of Preventing Future Domestic Violence.**

Nationwide, more than 10 million people endure violence at the hands of an intimate partner every year—nearly 20 every minute.<sup>6</sup> On average, more than 50,000 domestic violence reports are filed each year in Washington,<sup>7</sup> and domestic violence calls “constitute the single largest category of [emergency] calls received by police” nationwide.<sup>8</sup> Domestic violence takes an incredible toll on its survivors' physical and psychological wellbeing.<sup>9</sup> It also imposes immense public costs: nationwide, the health-related costs of intimate partner violence exceed

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<sup>6</sup> Nat'l Coalition Against Domestic Violence, *NCADV National Fact Sheet* (Sept. 2014) <http://www.ncadv.org/files/Domestic%20Violence%20Stylized--GS%20edits.pdf>.

<sup>7</sup> Patricia Sully, *Taking It Seriously: Repairing Domestic Violence Sentencing in Washington State*, 34 SEATTLE U. L. REV. 963, 966 (2011) (internal citation omitted).

<sup>8</sup> ANDREW R. KLEIN, NAT'L INSTITUTE OF JUSTICE, PRACTICAL IMPLICATIONS OF CURRENT DOMESTIC VIOLENCE RESEARCH: FOR LAW ENFORCEMENT, PROSECUTORS, AND JUDGES (2009).

<sup>9</sup> See, e.g., RCW 10.99.010 (noting the “serious consequences of domestic violence to society and to the survivors”).

\$5.8 billion annually, and survivors' lost productivity and earnings account for an additional \$1.8 billion lost each year.<sup>10</sup>

1. *The Legislature enacted the DVPA to improve the State's response to domestic violence.*

The Washington Legislature recognized that domestic violence exacts a heavy toll on society starting in 1979, when it enacted the state's first domestic violence laws.<sup>11</sup> In 1984, recognizing that domestic violence survivors needed civil remedies to obtain protection, the Legislature enacted the DVPA to provide survivors with "a valuable tool to increase safety for survivors and to hold batterers accountable": the DVPO.<sup>12</sup> The Legislature recognized that "[d]omestic violence is a problem of immense proportions affecting individuals as well as communities [and is] at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse."<sup>13</sup> Furthermore, "[d]omestic violence costs millions of dollars each year in the state of Washington for

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<sup>10</sup> Sully, *supra* note 7, at 967-68.

<sup>11</sup> See RCW 10.99.010.

<sup>12</sup> See RCW 26.50.030; Laws of 1992, ch. 111, § 1; *Danny v. Laidlaw Transit Servs.*, 165 Wn.2d 200, 209, 193 P.3d 128 (2008).

<sup>13</sup> Laws of 1992, ch. 111, § 1.

health care, absence from work, services to children, and more.”<sup>14</sup> The purpose of DVPOs is to prevent domestic violence.<sup>15</sup>

More important, domestic violence prevention should be “rapid and efficient;”<sup>16</sup> the DVPA is meant to give survivors “easy, quick, and effective” access to DVPOs.<sup>17</sup> To this end, the Legislature has amended the DVPA many times since 1984 to “increase the survivor’s access to the courts, and enhance the court’s ability to enter appropriate protection orders.”<sup>18</sup> The Legislature has worked to remove cost, language, and logistical barriers facing domestic violence survivors seeking DVPOs. For example, the DVPA forbids agencies from charging petitioners fees for filing, service, or certified copies;<sup>19</sup> permits courts to schedule telephonic hearings “to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further acts of domestic violence”;<sup>20</sup> requires court clerks’ offices to make available forms, informational brochures, and instructions in both English and languages

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<sup>14</sup> *Id.*

<sup>15</sup> *Spence v. Kaminski*, 103 Wn. App. 325, 335, 12 P.3d 1030 (2000) (“the legitimate purpose of the Domestic Violence Prevention Act [is] to prevent domestic violence”).

<sup>16</sup> *In re Marriage of Stewart*, 133 Wn. App. 545, 552, 137 P.3d 25 (2006).

<sup>17</sup> Laws of 1992, ch. 111, § 1.

<sup>18</sup> Engrossed Substitute S.B. 5219, 54th Legis., Reg. Sess. (Wash. 1995); Laws of 1992, ch. 111, § 1 (“Refinements [to the DVPA] are needed so that survivors have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created”).

<sup>19</sup> RCW 26.50.040.

<sup>20</sup> RCW 26.50.050.

spoken by significant non-English speaking populations;<sup>21</sup> and requires appointment of an interpreter for any party who cannot readily speak or understand English.<sup>22</sup> The DVPA's clear purpose is to provide domestic violence survivors with "easy, quick, and effective access" to DVPOs.<sup>23</sup>

2. *The Legislature has recognized that DVPOs should be issued for a minimum of one year.*

The DVPA's history reflects a clear legislative intent that DVPOs should be issued for at least a year. When the Legislature first enacted the DVPA in 1984, it provided that a domestic violence protection order "shall be for a fixed period not to exceed one year."<sup>24</sup> But in 1992, the Legislature amended the DVPA to remove this one-year limitation, except in cases where the order restrains the respondent from contacting his or her minor children.<sup>25</sup> The Legislature also established a process for survivors to renew DVPOs, providing that they may file "a petition for renewal at any time within the three months before the order expires."<sup>26</sup> This renewal provision clearly indicates that the Legislature did not

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<sup>21</sup> RCW 26.50.030(3), RCW 26.50.035.

<sup>22</sup> RCW 26.50.055; *see also Laidlaw Transit Servs.*, 165 Wn.2d at 212. The DVPA also provides for rehabilitation of abusers: "In an effort to *prevent perpetrators from engaging in further violence*, the Legislature has created domestic violence treatment programs for abusers and provided courts with the ability to order a perpetrator into treatment."

<sup>23</sup> Laws of 1992, ch. 111, § 1.

<sup>24</sup> Laws of 1984, ch. 263, § 7.

<sup>25</sup> Laws of 1992, ch. 143, § 2.

<sup>26</sup> *Id.*

contemplate the entry of very short-term DVPOs whose duration would be less than the three-month window to petition for renewal of an order.

In the same legislation, the Legislature added provisions to the DVPA to permit service of DVPOs by publication.<sup>27</sup> Significantly, the Legislature expressly provided that publication of the summons must inform the respondent that “[i]f you fail to respond, an order of protection will be issued against you pursuant to the provisions of the [DVPA], chapter 26.50 RCW, for *a minimum of one year* from the date you are required to appear.”<sup>28</sup> The provision that a DVPO would be entered for a “minimum of one year” clearly and explicitly reflects the Legislature’s intent that such orders should, in fact, be issued for at least one year.

Consistent with these provisions, the Senate Bill Report for this legislation (SHB 2745) refers repeatedly to “one-year orders” and the provisions for their reissuance.<sup>29</sup> The legislative history also indicates that the prime sponsor of the bill, Rep. Holly Myers, testified in favor of the legislation by noting “[i]t is very traumatizing for a person who wants to renew a protection order to have to convince a judge and possibly face the respondent every time the order expires. It is also financial costly.”<sup>30</sup>

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<sup>27</sup> See Laws of 1992, ch. 143 § 4 (codified at RCW 26.50.085).

<sup>28</sup> *Id.* (emphasis added).

<sup>29</sup> See Bill Report SB 2745 (Wa. 1992).

<sup>30</sup> *Id.*

The point that Rep. Myers made in 1992 is as true today as it was then. It is traumatizing and expensive for a domestic violence survivor to return to court repeatedly to obtain and keep protection from an abuser. But short-term protection orders like the one entered in Ms. Leavitt's case require exactly that: they force survivors to return repeatedly to court, whether to renew inadequate, short-term DVPOs or to pursue complex, expensive, and time-consuming family law cases. A DVPO can be meaningful only if it is long enough to provide the survivor with protection. This simple statement means that 60 days is not sufficient and is contrary to legislative intent and the statutory scheme of RCW Ch. 26.50.

3. *The Legislature has made it clear that a court may not issue a short-term DVPO and compel the survivor to pursue continued protection in a dissolution.*

Courts should not limit the relief granted in a DVPO based on the possibility that a survivor could pursue a family law action such as dissolution. The Legislature specifically addressed this issue in 1995, when it amended the DVPA to provide that “[r]elief under this chapter [RCW 26.50] shall not be denied or delayed on the grounds that the relief is available in another action.”<sup>31</sup> The Legislature’s plain intent in enacting this amendment was to ensure that domestic violence survivors like

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<sup>31</sup> Laws of 1995, ch. 246 § 2(2) (codified at RCW 26.50.025).

Ms. Leavitt are not denied protection under the DVPA on the grounds that they could pursue such relief in another action, such as dissolution.

Unfortunately, courts across the state routinely overlook the Legislature's express direction and incorrectly compel domestic violence survivors who seek DVPOs to pursue relief in a family law case, rather than issuing full one-year DVPOs under RCW 26.50. Ms. Leavitt's case is a prime example of this dangerous practice, as well as the unwarranted assumptions that underlie such practice.

Here, like the vast majority of survivors who seek DVPOs, Ms. Leavitt sought a protection order without the assistance of an attorney. The hearing on the matter was extremely brief -- the transcript of the hearing consists of less than two pages. At the hearing, the judge stated that Ms. Leavitt would need to "work it out" with her abusive husband and asked if she was "going forward with [a dissolution] right away." Ms. Leavitt responded "as soon as possible," and the judge stated, "Okay. I am going to make this [DVPO] for 60 days." However, Ms. Leavitt's response provided no basis for the court to enter only a 60-day order.

First, as discussed above, the Legislature's clear intent was for DVPOs to be granted for at least a year. In addition, the Legislature's explicit direction that a DVPO must not be delayed or denied because relief is available in another action underscores the Legislature's intent



that DVPOs under RCW 26.50 be issued *regardless* of whether a petitioner could seek relief in another action, such as a dissolution. The question of whether Ms. Leavitt could pursue a dissolution was irrelevant to her request for a DVPO, and was not appropriately raised at the hearing.

The irrelevance of Ms. Leavitt's intent to pursue a divorce aside, there is no basis in the record to assume that the short-term order entered here was sufficient to protect Ms. Leavitt. Although she appeared to indicate in response to questioning by the court that she intended to pursue a divorce "as soon as possible," this response hardly means that she was able, and communicated that ability to the trial court, to navigate the complicated mandatory legal forms, serve papers on her abusive husband, find the money to pay associated legal expenses, and deal with the emotional difficulty of proceeding with a dissolution within just 60 days.<sup>32</sup> Initiating and pursuing such proceedings are difficult enough for lawyers, much less unrepresented domestic violence survivors. Simply put, there is no basis to assume that "as soon as possible" meant "within 60 days."

It should also be emphasized that RCW 26.50.060(2) provides:

If the petitioner has petitioned for relief on behalf of the respondent's minor children [as Ms. Leavitt did here], the court shall advise the petitioner that if the petitioner wants to continue

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<sup>32</sup> Indeed, Ms. Leavitt had filed for dissolution three years before she sought this protection order, which should have signaled to the court her obvious difficulty in pursuing dissolution to completion.

protection for a period beyond one year<sup>33</sup> the petitioner may either petition for renewal pursuant to the provisions of this chapter [RCW 26.50] or may seek relief pursuant to the provisions of chapter 26.09 [the dissolution statutes] or RCW 26.26 [the parentage statutes].

Here, the court failed to advise Ms. Leavitt of her options of *either* seeking renewal of the protection order *or* pursuing relief in a dissolution. Instead, the court incorrectly limited her protection order to 60 days and essentially directed her to pursue only one option – a dissolution – in order to obtain continued protection for herself and her children. The court’s actions are contrary to the explicit provisions of the DVPA and constitute a clear error of law.

In sum, the DVPA clearly reflects the Legislature’s intent that DVPOs be not only be accessible, but effective at preventing domestic violence. In this case, the trial court’s 60-day order is premised on underlying assumptions that have no place in a RCW 26.50 proceeding. DVPO petitions should be adjudicated based on the DVPA alone, and such petitions should be granted accordingly. The trial court’s 60-day order effectively cuts off Ms. Leavitt’s access to a meaningful RCW 26.50 remedy and the critical protections such a remedy would provide. This Court should reverse the 60-day DVPO, remand for entry of the one-year

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<sup>33</sup> The Legislature’s reference to “one year” in this provision serves as another indication of the Legislature’s intent that DVPOs should be issued for at least one year.

DVPO to which Ms. Leavitt is entitled, and direct lower courts to abide by a one-year default term for DVPOs.

**B. Meaningful DVPOs Effectively Prevent Domestic Violence.**

“Several studies have found that survivors’ safety improved after obtaining a protective order.”<sup>34</sup> Such studies typically consider a DVPO’s efficacy through one of two lenses: (1) its subjective efficacy from the survivor’s perspective, or “women’s reports that their lives have improved since getting the order, that they feel better about themselves, and that they feel safer”;<sup>35</sup> and (2) its efficacy in reducing incidents of re-abuse.<sup>36</sup> DVPOs offer significant advantages over other legal remedies available to survivors and are immensely effective viewed through either lens.

1. *DVPOs offer domestic violence survivors several advantages over other legal remedies such as criminal prosecution.*

“Although [DVPOs] are not the only remedies available to battered women, they are probably the most attractive.”<sup>37</sup> DVPOs provide

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<sup>34</sup> WASHINGTON STATE DEP’T. OF HEALTH, *Health of Washington State: Domestic Violence* (May, 2013), available at <http://www.doh.wa.gov/Portals/1/Documents/5500/IV-DV2013.pdf>.

<sup>35</sup> SUSAN KEILITZ, PAULA L. HANNAFORD, & HILERY S. EFKEMAN, U.S. DEP’T. OF JUSTICE, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR SURVIVORS OF DOMESTIC VIOLENCE, 4 (1998).

<sup>36</sup> Carolyn N. Ko, *Civil Restraining Orders for Domestic Violence: The Unresolved Question of “Efficacy”*, 11 S. CAL. INTERDISC. L.J. 361, 368 (2001-02).

<sup>37</sup> *Id.* .

survivors immediate relief by enjoining abusive conduct<sup>38</sup> and can make the survivor's home, school, and workplace safe by prohibiting an abuser's presence.<sup>39</sup> By contrast, criminal proceedings often encounter delays, during which the defendant may be allowed to live with the survivor.<sup>40</sup> Also, civil proceedings "are less time consuming" and thus "less burdensome for survivors who have children or are employed."<sup>41</sup>

More important, statutes providing for civil DVPOs offer survivors a wider array of remedies that courts can tailor to individual survivors' and families' specific circumstances. The DVPA, for example, allows courts to restrain the respondent from further violence for at least one year; exclude the respondent from the survivor's residence, workplace, or school; prohibit the respondent from coming within a certain distance of specified locations; order the respondent to participate in a domestic violence treatment program; and "[o]rder other relief as [the court] deems necessary for the protection of the petitioner and other family or

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<sup>38</sup> RCW 26.50.060(1)(a) (the court may "[r]estrain the respondent from committing acts of domestic violence").

<sup>39</sup> RCW 26.50.060(1)(b) (the court may "[e]xclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child"); *see also* RCW 26.50.060(1)(c) (the court may "[p]rohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location").

<sup>40</sup> Ko, *supra* note 36, at 368.

<sup>41</sup> *Id.* (citing Barbara Hart, *Battered Women and the Criminal Justice System*, in DO ARRESTS AND RESTRAINING ORDERS WORK?, 98, 102 (EVE BUZAWA & CARL BUZAWA eds., 1996)).

household members.”<sup>42</sup> DVPOs also serve a preventive, rather than punitive, purpose, and may be less likely to make the abuser angry or lead to reprisal against the survivor.<sup>43</sup> This purpose—to prevent future violence, rather than to punish abusers—“often directly parallels the desired interest of the survivors.”<sup>44</sup> DVPOs are a vital part of domestic violence prevention because they protect *survivors’* interests.

2. *DVPOs are effective in improving domestic violence survivors’ psychological wellbeing.*

Relationships marked by domestic violence “involve[] a pattern of domination and control by the abuser” that may create an “inherent feeling of helplessness” in the survivor.<sup>45</sup> Applying for and obtaining a DVPO “is a way to give the survivor her voice again.”<sup>46</sup> The vast majority of survivors who obtain DVPOs feel that such orders help document the abuse;<sup>47</sup> communicate to the abuser that battering is wrong;<sup>48</sup> and give survivors more control over their relationships and lives.<sup>49</sup>

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<sup>42</sup> RCW 26.50.060(1).

<sup>43</sup> Ko, *supra* note 36, at 367.

<sup>44</sup> *Id.* at 368. There are numerous reasons why a survivor may not want to press criminal charges against her abuser. For example, an abuser may financially support the survivor. In such cases, the abuser’s prosecution and incarceration may stop the violence, but it may also deprive the survivor of an important source of income. *See id.* at 368-69.

<sup>45</sup> *Id.* at 369.

<sup>46</sup> *Id.* (internal quotation omitted).

<sup>47</sup> Adele Harrell & Barbara E. Smith, *Effects of Restraining Orders on Domestic Violence Survivors*, in DO ARRESTS AND RESTRAINING ORDERS WORK? 214, 218 (EVE BUZAWA & CARL BUZAWA eds., 1996).

<sup>48</sup> *Id.*

<sup>49</sup> Karla Fischer & Mary Rose, *When “Enough is Enough”: Battered Women’s Decision Making Around Court Orders of Protection*, 41 CRIME & DELINQ. 414, 417 (1995).

It is not surprising, therefore, that “[e]mpirical studies have consistently shown a high level of satisfaction among women who have obtained [DVPOs].”<sup>50</sup> For example, a 1994 National Center for State Courts study found that, one month after receiving DVPOs, 72% of women felt better about themselves and believed their lives had improved.<sup>51</sup> More significant, 74% reported that they felt safer.<sup>52</sup> The orders’ positive effects improved over time: 93% of women interviewed six months after obtaining DVPOs felt better about themselves and 81% felt safer.<sup>53</sup> Finally, 95% of women said they would seek DVPOs again.<sup>54</sup>

A 2009 study by the University of Kentucky (hereinafter, the “Kentucky Study”) found that, six months after receiving a DVPO, women believed, on average, that the orders were “fairly effective.”<sup>55</sup> Of the women whose DVPOs had not been violated, 95.3% believed the orders to be effective.<sup>56</sup> Even more telling, the vast majority (77.2%) of women whose DVPOs *had* been violated still believed the orders were

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<sup>50</sup> Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1510 (2007-08).

<sup>51</sup> SUSAN KEILITZ, PAULA L. HANNAFORD, & HILERY S. EFKEMAN, U.S. DEP’T. OF JUSTICE, CIVIL PROTECTION ORDERS: THE BENEFITS AND LIMITATIONS FOR SURVIVORS OF DOMESTIC VIOLENCE, 5 (1998).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> TK LOGAN, ROBERT WALKER, WILLIAM HOYT, & TERI FARAGHER, THE KENTUCKY CIVIL PROTECTIVE ORDER STUDY: A RURAL AND URBAN MULTIPLE PERSPECTIVE STUDY OF PROTECTIVE ORDER VIOLATION CONSEQUENCES, RESPONSES, AND COST, 103 (2009).

<sup>56</sup> *Id.*

effective.<sup>57</sup> In addition, women's fear of future harm decreased dramatically from the six-week period after they first obtained a DVPO (the "baseline" period) to six months from then.<sup>58</sup> For example, where 75.9% of women feared threats and harassment at baseline, only 42.4% feared similar abuse six months after obtaining the order, and where 57.6% of women feared physical injury at baseline, six months after obtaining DVPOs, only 37.1% feared physical injury.<sup>59</sup> In sum, DVPOs give survivors their voices back, provide survivors with considerable psychological benefits, and reduce survivors' fear of future abuse.

3. *DVPOs effectively prevent and reduce future domestic violence.*

DVPOs also effectively prevent and reduce the severity of domestic violence. One study based on interviews with Seattle-area survivors found that, over nine months, women who obtained DVPOs experienced 70% fewer incidents of physical violence than women who did not receive DVPOs.<sup>60</sup> Women with DVPOs were also less likely to experience almost all other forms of abuse.<sup>61</sup> A Texas study found that the mere act of *applying* for a DVPO significantly reduced average levels of

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<sup>57</sup> *Id.*

<sup>58</sup> *See id.* at 101.

<sup>59</sup> *Id.*

<sup>60</sup> Victoria L. Holt et al., *Do Protective Orders Affect the Likelihood of Future Partner Violence and Injury?*, 24 AM. J. PREVENTIVE MED. 16, 20 (2003) (finding that civil protection orders are one of the few domestic violence intervention mechanisms that is demonstrably effective).

<sup>61</sup> *Id.*

violence for a year following application, with even greater reductions reported by survivors who received DVPOs.<sup>62</sup> And the Kentucky Study confirmed that DVPOs effectively prevent or, at minimum, drastically reduce the severity and frequency of re-abuse.<sup>63</sup>

Over a six-month period, half of the Kentucky Study participants' DVPOs prevented *any* incidents of re-abuse.<sup>64</sup> In addition, "even among those who experienced [DVPO] violations, the severity score was significantly reduced at follow-up."<sup>65</sup> The Kentucky Study examined the number of women (of those whose DVPOs were violated) who experienced several types of abuse, ranging from financial control to physical assault, before and six months after obtaining DVPOs. Its results show that DVPOs were immensely effective at preventing or drastically reducing most types of abuse.<sup>66</sup> For example, the vast majority of these women experienced threats of death (72.4%) or serious harm (83.8%), as well as actual moderate (76.2%) or severe (58.1%) physical harm, prior to obtaining DVPOs.<sup>67</sup> In the six months after obtaining DVPOs, however, fewer than half received threats from their abusers (25.7% received death

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<sup>62</sup> Julia Henderson Gist et al., *Protection Orders and Assault Charges: Do Justice Interventions Reduce Violence Against Women*, 15 AM. J. FAM. L. 59, 67-68 (2001).

<sup>63</sup> Logan et al., *supra* note 55, at 103.

<sup>64</sup> *Id.* at 97.

<sup>65</sup> *Id.* at 98.

<sup>66</sup> *See id.* at 99.

<sup>67</sup> *Id.*



threats and 30.5% received threats of serious harm) and fewer than one-fifth experienced moderate (15.2%) or severe (10.5%) physical harm.<sup>68</sup> Not only did fewer women experience abuse after obtaining DVPOs, but those that did experience abuse experienced it less frequently: “of those who experienced a specific abuse tactic, the average number of days each of the tactics was experienced was lower at follow-up compared to baseline for almost all of the abuse tactics.”<sup>69</sup>

Meaningful DVPOs fulfill the Washington Legislature’s purpose by preventing and reducing the severity of domestic violence. Knowing that such laws are effective, Washington courts should ensure that domestic violence survivors receive the DVPA’s full protection.

**C. Ms. Leavitt is Entitled to Meaningful Protection Under the DVPA in the Form of a Full, One-Year DVPO.**

Short-term DVPOs like that granted to Ms. Leavitt not only fail meaningfully to improve survivor wellbeing and prevent future abuse—they also go against the Washington Legislature’s purpose in enacting the DVPA. Such orders violate the Legislature’s explicit intent that civil protection be readily and efficiently available to survivors under the DVPA; violate the DVPA’s presumption that DVPOs be granted for at least one year; improperly condition survivors’ protection on wholly

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 98.

unrelated proceedings such as dissolutions; require survivors to bear the financial, logistical, and emotional burdens of repeat trips to the courthouse to obtain continued protection; and most importantly, fail to prevent further domestic violence. In short, Ms. Leavitt's 60-day DVPO does not provide the *meaningful* domestic violence protection to which she is entitled and which the Legislature intends the DVPA to provide.

## V. CONCLUSION

For the foregoing reasons, this Court should fulfill the Legislature's purpose in enacting the DVPA—to prevent domestic violence—by vacating the trial court's order and remanding for entry of a full, one-year protection order for Ms. Leavitt and her children.


Dated this 21<sup>st</sup> day of November, 2014.

GARVEY SCHUBERT BARER

By 

Judith A. Endejan, WSBA #11016  
Colleen Hannigan, WSBA #45535

LEGAL VOICE

By authority given, 

David Ward, WSBA #28707

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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

Brandy Leavitt,

Petitioner/Appellant,

v.

Joseph J. Leavitt,

Defendant/Respondent.

NO. 46014-9-II

PROOF OF SERVICE

Darlyne De Mars declares under penalty of perjury as follows:

I am at all times hereinafter mentioned a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on November 21, 2014, I caused true copies of the following documents:

1. Motion for Leave to File Amicus Curiae Brief;
2. Amicus Curiae Brief of Washington State Coalition Against Domestic Violence and Legal Voice;
3. Proof of Service.

to be served upon:

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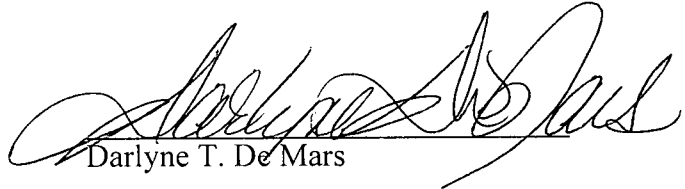
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I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 21<sup>st</sup> day of November, 2014.



Darlyne T. De Mars

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